

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Evan Price

(b) County of Residence of First Listed Plaintiff Lehigh

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

John S. Harrison and Kevin H. Conrad

Broughal & DeVito, L.L.P.

38 W. Market Street, Bethlehem, PA 18018; (610) 865-3664

DEFENDANTS

Good Shepherd Rehabilitation Network

County of Residence of First Listed Defendant Lehigh

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Unknown.

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff☒ 3 Federal Question
(U.S. Government Not a Party)☐ 2 U.S. Government Defendant☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff, and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input checked="" type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding☐ 2 Removed from State Court☐ 3 Remanded from Appellate Court☐ 4 Reinstated or Reopened☐ 5 Transferred from Another District (specify)☐ 6 Multidistrict Litigation - Transfer☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. Section 12112(a)

Brief description of cause:

Disability Discrimination in Violation of the ADA

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/08/2018

SIGNATURE OF ATTORNEY OF RECORD

John S. Harrison, Esquire

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 747 N. 9th Street, Allentown, PA 18102

Address of Defendant: 850 South 5th Street, Allentown, PA 18103

Place of Accident, Incident or Transaction: 850 South 5th Street, Allentown, PA 18103

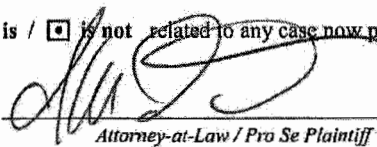
RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when *Yes* is answered to any of the following questions:

- | | | |
|--|------------------------------|--|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 11/08/2018


Attorney-at-Law / Pro Se Plaintiff

53864

Attorney I.D. # (if applicable)

CIVIL: (Place a ✓ in one category only)

A. Federal Question Cases:

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
- ☐ 2. FELA
- ☐ 3. Jones Act-Personal Injury
- ☐ 4. Antitrust
- ☐ 5. Patent
- ☐ 6. Labor-Management Relations
- ☒ 7. Civil Rights
- ☐ 8. Habeas Corpus
- ☐ 9. Securities Act(s) Cases
- ☐ 10. Social Security Review Cases
- ☐ 11. All other Federal Question Cases

(Please specify): _____

B. Diversity Jurisdiction Cases:

- ☐ 1. Insurance Contract and Other Contracts
- ☐ 2. Airplane Personal Injury
- ☐ 3. Assault, Defamation
- ☐ 4. Marine Personal Injury
- ☐ 5. Motor Vehicle Personal Injury
- ☐ 6. Other Personal Injury (Please specify): _____
- ☐ 7. Products Liability
- ☐ 8. Products Liability - Asbestos
- ☐ 9. All other Diversity Cases

(Please specify): _____

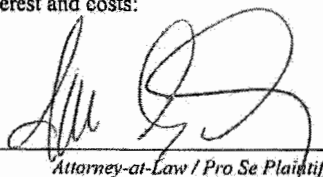
ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, John S. Harrison, counsel of record or pro se plaintiff, do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:

☐ Relief other than monetary damages is sought.

DATE: 11/08/2019


Attorney-at-Law / Pro Se Plaintiff

53864

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

EVAN PRICE

v.

GOOD SHEPHERD REHABILITATION
NETWORK

CIVIL ACTION

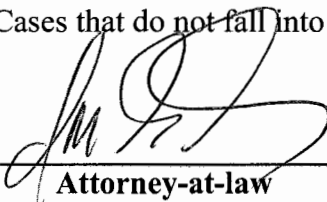
NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.)
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

11/8/2018
Date


Attorney-at-law

John S. Harrison
Attorney for Plaintiff

(610) 865-3664
Telephone

(610) 865-0969
FAX Number

johnharrison@broughal-devito.com
E-Mail Address

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

EVAN PRICE,)	
)	
)	
Plaintiff)	Civil Action
)	
v.)	No. _____
)	
GOOD SHEPHERD REHABILITATION)	
NETWORK,)	JURY TRIAL DEMANDED
)	
Defendant)	
)	

COMPLAINT

Plaintiff, Evan Price ("Plaintiff"), by and through his attorneys, Broughal & DeVito, L.L.P., files this Complaint against Defendant, Good Shephard Rehabilitation Network, in avers:

NATURE OF THE ACTION

1. This civil action arises and asserts claims of disability discrimination in employment under and in violation of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 *et seq.* ("ADA"), and the Pennsylvania Human Relations Act, as amended, 43 P.S. § 951 *et seq.* ("PHRA").

JURISDICTION AND VENUE

2. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331 over Plaintiff's federal-law ADA claim.

3. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over Plaintiff's state-law PHRA claim because it arises from the same events as Plaintiff's federal claim.

4. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b)(1) because Defendant resides in this judicial district, and § 1391(b)(2) because a substantial portion of the events giving rise to this action occurred in this district.

PROCEDURAL PREREQUISITES

5. Plaintiff exhausted the administrative remedies available to him as a prerequisite to filing this action.

6. Plaintiff dual-filed a Charge of Discrimination, No. 530-2018-04594, which was received by the United States Equal Employment Opportunity Commission ("EEOC") on June 28, 2018.

7. The EEOC issued to Plaintiff on August 13, 2018 a Notice of Right to Sue; this action is filed within ninety (90) days of that Notice.

FACTS

8. Plaintiff is an adult male individual presently residing at 747 N. 9th Street, Allentown, Pennsylvania 18012.

9. Defendant, Good Shepherd Rehabilitation Network, is a Pennsylvania corporation not for profit, with its registered address and principle place of business at 850 S. 5th Street, Allentown, Pennsylvania, 18103.

10. Defendant employed more than twenty (20) people at all material times.

11. Defendant hired Plaintiff as a Registered Nurse (“RN”) on or about September 2, 2008.

12. Plaintiff is, and was at all times material to this Complaint, an individual with a disability, for purposes of the ADA and PHRA.

13. Plaintiff suffers from degenerative disc disease lumbar (722.52) (M51.36); foraminal stenosis of lumbar region (724.02) (M99.83); lumbar disc herniation (722.10) (M51.26); and left lumbar radiculopathy (724.4) (M54.16) (hereinafter collectively, “Back Conditions”).

14. Plaintiff’s Back Conditions were initially diagnosed in or about July 2017.

15. Plaintiff’s Back Conditions substantially limit him in major life activities including standing, bending, stooping, kneeling, lifting and similar physical activities.

16. While employed by Defendant, Plaintiff took a medical leave beginning on or about August 2018 as a result of his Back Conditions.

17. Plaintiff was eligible for, and took, continuous leave under the Family and Medical Leave Act (“FMLA”) in 2017 related to his Back Conditions.

18. By letter dated October 25, 2017, Defendant informed Plaintiff that his FMLA leave was exhausted as of November 7, 2018 and that he was converted to a non-FMLA medical leave running concurrent with this FMLA leave for a maximum of one hundred eighty (180) days.

19. Defendant's October 25, 2017 letter informed Plaintiff that he would be transferred to non-FMLA medical leave if not cleared to return to work; the October 25, 2017 made no mention of Plaintiff's right to request a reasonable accommodation which might allow him to return from his FMLA leave.

20. While on medical leave, in December 2017, Plaintiff made a request to Defendant to be considered for a reasonable accommodation for his Back Conditions that would allow him to return to work from medical leave.

21. Plaintiff requested—as a reasonable accommodation for his Back Conditions—that Defendant allow him to sit during charting as needed, and to have assistance when transferring patients who were too heavy for him to transfer on his own.

22. Upon information and belief, Defendant allows RNs who do not have a disability but who are smaller and lighter in build, to have assistance from a Certified Nurses Aid (“CNA”) when such assistance is needed in transferring or lifting a patient who his to heavy for the RN to lift on his/her own.

23. Plaintiff, through correspondence from counsel dated December 5, 2017, reiterated his request for a reasonable accommodation and requested a dialogue to explore potential accommodation(s).

24. Defendant did not engage in any dialogue with Plaintiff about his requested accommodation and whether it, or another reasonable accommodation, would allow him to return to work in his position as a RN.

25. Rather, Defendant informed Plaintiff it was unwilling to grant that accommodation and, instead, informed Plaintiff that he could be transferred to an alternative, vacant, non-clinical position.

26. When presented with the option of this transfer to another position, Plaintiff requested information about the unidentified position into which Defendant proposed to transfer Plaintiff—including the responsibilities and rate of pay for the unspecified position.

27. Defendant never responded to Plaintiff's requests for information about the unspecified alternative position.

28. Ultimately, by letter dated January 19, 2018, Defendant summarily rejected Plaintiff's requests for accommodation regarding his RN position—despite not having engaged in a meaningful dialogue with Plaintiff regarding accommodation(s) which would permit Plaintiff to return to an RN position—and incorrectly asserted that Plaintiff “denied consideration for being transferred to a vacant position.”

29. Plaintiff did not reject consideration of an alternate position; rather, Plaintiff requested information regarding what position(s) Defendant was proposing as an alternative.

30. Defendant terminated Plaintiff's employment on or about March 8, 2018 by letter incorrectly stating that Plaintiff had resigned; Plaintiff did not resign his employment with Defendant at any time.

COUNT I

VIOLATION OF ADA

31. Plaintiff incorporates herein by reference all foregoing paragraphs as though the same were set forth at length.

32. Plaintiff has a disability under the ADA and had such a disability at all times material to this action.

33. Defendant was aware of Plaintiff's disability.

34. Plaintiff was qualified for the position of RN at Defendant.

35. At all times material hereto, Plaintiff was capable of performing the essential functions of his position with a reasonable accommodation.

36. Plaintiff requested, in good faith, a reasonable accommodation from Defendant for his disability.

37. Plaintiff's requests for a reasonable accommodation for his disability constitute protected conduct under the ADA.

38. Defendant's conduct included failing to engage in good faith in the interactive process as required under the ADA.

39. Defendant's conduct included failing to grant Plaintiff a reasonable accommodation for his disability.

40. Defendant's refusal to engage in good faith in the interactive process with Plaintiff, refusal to provide Plaintiff with a reasonable accommodation, and treatment of Plaintiff less favorably than non-disabled RNs discrimination in violation of the ADA.

41. Defendant's refusal to engage in a good faith dialogue and to provide any information about the allegedly proposed alternative position, and termination of Plaintiff's employment constitute retaliation for Plaintiff's request for reasonable accommodation, in violation of the ADA.

42. Defendant's actions were intentional and conducted with malice and reckless indifference to Plaintiff's rights.

WHEREFORE, Plaintiff respectfully requests judgment in his favor and against Defendant with an award as follows: back pay, in an amount to be determined at trial; front pay, in an amount to be determined at trial; compensatory damages for Plaintiff's non-economic damages including, but not limited to, pain and suffering, emotional distress and damage to his professional reputation, in an amount to be determined at trial; punitive damages, in an amount to be determined at trial; attorney fees and costs; and any other relief this Honorable Court deems necessary and just.

COUNT II

VIOLATION OF PHRA

43. Plaintiff incorporates herein by reference all foregoing paragraphs as though the same were set forth at length.

44. Defendant's conduct described above constitutes failure to accommodate, disability discrimination, and retaliation in violation of the PHRA.

WHEREFORE, Plaintiff respectfully requests judgment in his favor and against Defendant in an award as follows: back pay, in an amount to be determined

at trial; front pay, in an amount to be determined at trial; compensatory damages for Plaintiff's non-economic damages including, but not limited to, pain and suffering, emotional distress and damage to his professional reputation, in an amount to be determined at trial attorney fees and costs; and any other relief this Honorable Court deems just and proper.

JURY TRIAL DEMAND

45. Plaintiff requests a trial by jury on all claims and issues so triable.

Date: November 8, 2018

By:

BROUGHAL & DEVITO, L.L.P.



John S. Harrison, Esquire
Attorney I.D. #53864

Kevin H. Conrad, Esquire
Attorney I.D. #312209

38 W. Market Street

Bethlehem, PA 18018

Telephone No.: (610) 865-3664

Facsimile No.: (610) 865-0969

johnharrison@broughal-devito.com

kevinconrad@broughal-devito.com

Counsel for Plaintiff